



Federal Communications Commission  
Washington, D.C. 20554

December 13, 2012

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Measuring Broadband America Program, GN Docket No. 12-264

Dear Ms. Dortch:

On December 10, 2012, Aleecia McDonald, Stanford Law School Center for Internet & Society Fellow, met with Walter Johnston, James Miller and Deborah Broderson, Federal Communications Commission; and Peter Miller and Paul Ohm, Federal Trade Commission (FTC) to discuss the Commission's Measuring Broadband America program's mobile measurement effort. The meeting focused on discussion of privacy issues and program goals described in a review document presented at the November 28, 2012 mobile collaborative meeting.<sup>1</sup>

Mr. Miller provided background on the two-year program's focus on the measurement of fixed broadband performance and the legal and technical mechanisms that were used to protect volunteer subscribers' privacy. He answered questions regarding the data collection, processing and reporting process for the 2011 and 2012 broadband performance reports and data release. He described the data aggregation and filtration process employed to isolate and remove test results and perform other processing in geographic blocks where few subscribers supplied reportable data.

Mr. Miller sought feedback on a document presented at the November 28, 2012 mobile collaborative meeting.<sup>2</sup> He explained that the document was intended to frame staffs' initial thinking regarding privacy policy objectives and concerns, and described a range of typical use cases with a desired information element or output coupled with the necessary data elements required to produce the output. He suggested that likely users of the mobile broadband data products of the program's mobile effort might include volunteer subscribers accessing their broadband performance data, researchers using data or analytic products in new research, and policy makers using data and analysis in policy development. Mr. Miller sought feedback on the specific use cases and data products described in the document, and what utility and risks might exist for specific users. He sought feedback on what disclosure controls or data processing strategies might address risks in ways that would maximize the value of the data products to the specific users and the general public.

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<sup>1</sup> The review document and an ex parte filing of the November 28, 2012 meeting are available in GN Docket No. 12-264.

<sup>2</sup> Measuring Broadband America Program's Mobile Measurement Privacy Policy and Implementation Review Document (Draft), available at <http://apps.fcc.gov/ecfs/document/view?id=7022069988>.

Mr. Miller discussed the goals and milestones of the privacy review, and the immediate goal of developing a high-level description of privacy policies that could guide further work, including a technical document specifying the technical strategies for data collection and processing. He described the legal and operational mechanisms employed in the program's two-year fixed effort to protect subscriber volunteers' privacy, and discussed how the Terms and Conditions Code of Conduct may be modified to address the mobile effort's specific privacy policies.

Ms. McDonald discussed that aggregation and modifying of the level of specificity of collected and released data may be a useful tool in protecting subscriber volunteers' privacy but described a need to review the mathematical implications of policy proposals to understand how changing the granularity of collected and released data may facilitate the protection of volunteers' privacy. She explained that input should be sought from academics focusing on reification issues of how data may be linked across different sources. She cautioned that review should also address how third parties with relationships to data or subscriber volunteers might be impacted by data aggregations strategies.

Ms. McDonald inquired whether provisions of the E-Government Act of 2002 requiring machine readable forms for privacy policies on government websites were relevant to the Commission's mobile application. Participants discussed that the applications were not web browser based and the provisions would likely not apply. She expressed the view that do-not-track provisions directed at website activity would also likely not apply noting the Commission's mobile application operates only with voluntary consent of the subscriber direct interaction.

Ms. McDonald discussed California and other state reports on application privacy and observed that questions related to when consent should be secured from consumers and the manner in which consent is secured may be areas where best practices are emerging. She suggested that research focused on consent to medical and research studies might also be useful in the privacy review.

Mr. Miller discussed elements in the 2012 Terms and Conditions executed by fixed subscriber volunteers and the programs need to exchange data with fixed subscriber volunteers' ISPs in order to confirm the subscribers' speed tier and other broadband subscription information. The participants on the call discussed that fixed subscriptions differ from mobile subscriptions and do not differentiate speed tiers, and thus would likely not require these validations with mobile subscribers' broadband providers. Participants discussed how application programming interfaces (API) or other software techniques could help proxy the collection of references from handsets in order to minimize privacy concerns, while preserving the value of collected data for reporting or other analysis.

Mr. Miller invited Ms. McDonald to share further comments and feedback at the mobile collaborative meeting scheduled for December 12, 2012.

Sincerely,



James Miller, Senior Attorney Advisor  
Electromagnetic Compatibility Division/OET